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21 **UNITED STATES DISTRICT COURT**

22 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

23 CINDY BARTSCH,

24 No: 2:09-cv-02492-WBS-DAD

25 Plaintiff,

26 **STIPULATION AND [PROPOSED]  
27 ORDER TO STAY  
28 PROCEEDINGS PENDING  
TRANSFER TO THE  
MULTIDISTRICT LITIGATION**

29 vs.  
30  
31 DAVOL, INC., BARD DEVICES,  
32 INC., and C.R. BARD, INC.,

33 Defendants.

1 Plaintiff and Defendants Davol, Inc., Bard Devices, Inc. and C.R. Bard, Inc. by  
2 and through their counsel of record propose the following stay pursuant to a  
3 stipulation based on the following facts:

4 Plaintiff alleges, among other things, that the “Bard® Composix® Kugel® Hernia  
5 Repair Patch,” a medical device manufactured and sold by Defendant Davol, Inc. and  
6 used by Plaintiff’s surgeon in conjunction with Plaintiff’s hernia repair, was defective  
7 and unreasonably dangerous when put to its intended use.

8 This product liability action is but one of a number of related actions filed in  
9 federal courts across the country. In 2006, in fact, two plaintiffs who also allege that  
10 they sustained injuries resulting from their receipt and use of the Bard® Composix®  
11 Kugel® Hernia Repair Patch filed a motion before the Judicial Panel on Multidistrict  
12 Litigation (“JPML”) seeking transfer and centralization of all cases involving this  
13 medical device pursuant to 28 U.S.C. § 1407. On May 31, 2007, the JPML heard that  
14 motion, and on June 22, 2007, the JPML granted the motion for transfer and  
15 consolidation. As a result, all federal court cases concerning the Bard® Composix®  
16 Kugel® Hernia Repair Patch have been or imminently will be transferred to the  
17 District of Rhode Island for consolidated pretrial proceedings. See *In re Kugel Mesh*  
18 *Hernia Patch Prods. Liab. Litig.*, 493 F.Supp. 2d 1371 (J.P.M.L. 2007).

19 Based on the JPML’s June 22, 2007 Transfer Order, and pursuant to Rules 7.4  
20 and 7.5 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199  
21 F.R.D. 435-36 (2001), a “tag-along” letter concerning this case, among others, was  
22 filed with the Clerk of the JPML on December 7, 2009 (see December 7, 2009 Letter  
23 to Jeffrey Lüthi, Clerk of the JPML, without exhibits (Ex. 1)). As has been the normal  
24 procedure, we anticipate that the JPML will issue a conditional transfer order in the  
25 coming weeks/months, which will effect transfer of this action to the United States  
26 District Court for the District of Rhode Island. Given that the transfer of this action  
27 in due course will moot any pretrial requirements and schedules imposed by this  
28

1 Court, Defendants request that all requirements, deadlines (including responsive  
2 pleading deadlines), and any other proceedings in this case be stayed 60 days pending  
3 transfer to the United States District Court for the District of Rhode Island. Upon  
4 transfer, the parties agree and acknowledge that they will comply with any  
5 requirements and deadlines imposed by the District of Rhode Island with respect to  
6 this action.

7 IT IS SO STIPULATED:

8 Dated: December 10, 2009

9 LOPEZ McHUGH LLP

10 By: /s/ \_\_\_\_\_  
11 Ramon Rossi Lopez  
12 Troy Brenes  
13 Attorneys for Plaintiff

14 Dated: December 10, 2009

15 REED SMITH LLP

16 By: /s/ \_\_\_\_\_  
17 Michael K. Brown  
18 Mildred Segura  
19 Attorneys for Defendants Davol Inc,  
20 Bard Devices, Inc. and C.R. Bard, Inc.

1  
2 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
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4 DATED: December 11, 2009  
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6   
7 WILLIAM B. SHUBB  
8 UNITED STATES DISTRICT JUDGE  
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